IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

IN RE PARENTAGE OF I.S.; STEVEN SALEH, Respondent, v. MARLENE WRIGHT, Appellant.	)	No. 63018-1-I UNPUBLISHED OPINION FILED: March 15, 2010

Schindler, C.J. — Steven Saleh and Marlene Wright are the parents of I.S. In the late summer of 2007, the superior court entered orders to prevent Wright from relocating with I.S. to India and scheduled an expedited trial date on Saleh's objection to relocation and modification of the parenting plan. At trial, the court entered an order modifying the parenting plan. The parenting plan designates Saleh as the primary residential parent and imposes limitations on visitation. The court also entered an order of child support and a protection order. Wright appeals the order denying her motion under CR 60(b) to vacate the parenting plan, child support order, and order of protection. Because the court properly denied the CR 60(b) motion to

vacate, we affirm.

FACTS

Steven Saleh and Marlene Wright lived together off and on beginning in 1994 until October 1997. Their daughter I.S. was born on June 25, 1997. After Saleh and Wright separated, Saleh filed a petition to establish paternity and enter a parenting plan and a child support order. In 2000, the Department of Social and Health Services Child Protective Services initiated a dependency action. The superior court consolidated the parenting action and the dependency proceedings.

Following a six-day trial in 2001, the court entered a final parenting plan, order of child support, and findings of fact and conclusions of law. The court found that both Saleh and Wright had engaged in the abusive use of conflict that created "the danger of serious damage to the child's psychological development." But based on finding that the parents "have adequate potential for future parenting" and did not present a threat to the child's well being, the court did not impose any restrictions or limitations in the parenting plan. The parenting plan designated Wright as the primary residential parent but gave Saleh substantial time with I.S. during the week, on weekends, and during summer vacation. In additional findings of fact, the court states that it will retain jurisdiction of the case "for the purpose of helping to protect this child from the potential harm of further parental conflict."

The parenting plan includes a provision related to relocation that requires the parent with the majority of residential time to give notice of any intended relocation to

the other parent. The parenting plan provides in pertinent part:

> SUMMARY OF RCW 26.09.430 – .480, REGARDING RELOCATION OF A CHILD.
> ...
> If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt.
> This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500 (Notice of Intended Relocation of A Child).

While I.S. was living with Saleh in August 2007, Wright told Saleh that beginning August 29, she planned to take I.S. to Disneyland for three weeks. Wright assured Saleh that I.S. would return from Disneyland in time to start school. However, when Saleh checked with the school, he learned that I.S. was not registered to attend school that year because I.S. was moving, "[t]he school said they had been told she was moving." Saleh also learned from the pediatrician's office that on July 31, I.S. "had been given immunizations for a move to India . . . ." In addition, when Toni Woodruff called Saleh sometime around August 20 to arrange a play date with her daughter and I.S., she told Saleh that she "wanted the girls to get together before [I.S.] left for India on the 29th."

On August 24, Saleh filed an "Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule," and requested a restraining order to prevent Wright from taking I.S. to India. In support, Saleh submitted the

records from the pediatrician's office. The July 31 record states: "[t]he mother has remarried and [I.S.] and she will be joining him in Bangalore, India, within the next couple of months. They will be staying in India between six months to a year. [I.S.] may be home schooled while in India." The records also state that the pediatrician discussed other necessary vaccines for I.S. while in India.

> Talked about family travel situation. Looking on the Centers for Disease Control (CDC) website, it is difficult to tell whether there is any other vaccines she needs other than her routine vaccines. I have given the mother the Health Department Travel Clinic's phone number.

Saleh alleged the detrimental effect of allowing I.S. to relocate to India with her mother outweighed any benefit and asked the court to modify the terms of the parenting plan. The proposed parenting plan designated Saleh as the primary residential parent and limited Wright to supervised visitation with I.S. Saleh also requested a restraining order to prevent relocation and asked the court to require Wright to turn over I.S.'s passport.

The court scheduled a show cause hearing for September 12, and issued a temporary order restraining Wright from taking I.S. out of the State. The court also issued an expedited "Order Setting Domestic Relocation Case Schedule," setting the trial date for December 31. The case schedule sets forth a number of mandatory deadlines, including a September 21 deadline that required Wright to file a proposed parenting plan.

On August 24, Wright was personally served at her residence at "8848 STONE

AVE N #502 SEATTLE," with the summons, Saleh's "Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule," his motion and declaration for an ex parte restraining order, the Order to Show Cause, medical records from the pediatrician's office, and the case scheduling order.

On August 27, Wright filed a motion to lift the temporary restraining order, and a response to Saleh's objection to relocation and petition to modify the parenting plan. In her response, Wright states that she does not intend to relocate or move to India. Wright said she was taking I.S. to India to visit her fiancée. Wright also lists a post office box number, "P. O. Box 77293, Seattle, WA 98177," and states notice of all further proceedings should be sent to that address.

As part of his reply, Saleh submitted a declaration from Woodruff describing her conversation with Wright about relocating to India. In her declaration, Woodruff states:

> In mid-July, 2007 I received a voice mail from Marlene stating she and [I.S.] would be moving to India on August 29th and wanted to schedule a time for my daughter and [I.S.] to get together before they left. She went on to say they would be living in a French area of India and named the town, which I cannot recall but believe it started with an "R." She stated [I.S.] was already enrolled in school and that they would be gone 6 mos to a year. I was out of town at the time and did not return the call. Upon returning to Seattle around August 20th my daughter called [I.S.] to arrange a time to play. She was at her fathers [sic] at the time. I said to Steven I wanted the girls to get together before [I.S.] left for India on the 29th. He appeared to be unaware of the travel plans. When I picked up [I.S.] I asked her if she was still going to India. She said 'yes' and stated they were leaving on August 29th and traveling through Taiwan or Malaysia first. I asked when she would return. She said, 'February, maybe' and her sister would visit in Dec.

Wright appeared at the show cause hearing on September 12. Wright confirmed that she still lived at the 8848 Stone Avenue address in Seattle. Wright denied that she intended to relocate to India with I.S. Wright said that she planned to take I.S. to Disneyland and then to visit her fiancée in India. Wright asserted that the records from the pediatrician were incorrect, that she never left a message for Woodruff, and that Woodruff was lying. Wright admitted I.S. was not enrolled in school, but said she planned to home school her. The court found that Wright was not credible and that she planned to take I.S. to India without notice to Saleh in violation of the parenting plan. The court found that the mother's conduct could adversely affect the child's best interest because the "[m]other was clearly taking the child to India; mother poses a risk to child absent supervised visitation pursuant to order." The court entered an order restraining relocation and ordered the mother to turn over the child's passport to the father's attorney within 24 hours. The court also entered a temporary parenting plan designating Saleh as the residential parent but allowing Wright supervised visitation "as often as possible." Wright did not comply with the order to turn over the passport or arrange for visitation with I.S.

On September 13, Wright's brother Rickey F. Jones, and Wright's adult daughter Christina Calhoun-Wright, attempted to contact I.S. at school. Saleh filed a motion for a temporary restraining order to prevent Wright and her relatives from contacting I.S. The court scheduled a show cause hearing. Wright did not appear at the show cause hearing. Wright left for India on September 15 and did not return until

mid to late November.

Wright and Saleh appeared for trial on January 2, 2008.[1] Wright confirmed her last address was 8848 Stone Avenue North and that she did not vacate the residence when she went to India.

Because Wright failed to comply with the case schedule, file a proposed parenting plan, or comply with the court order to turn over the child's passport, Saleh asked the court to enter his proposed parenting plan by default. Wright asked the court to retain the 2001 parenting plan.

The court entered Saleh's proposed parenting plan based on the finding that Wright did not comply with the statutory requirement to file a parenting plan, and "substantial noncompliance with the case schedule and the requirements of the case" without a showing of good cause.

> The court finds that mother has not complied with temporary orders and the Case Schedule; specifically the mother did not file a proposed Parenting Plan, did not turn over the child's passport; submitted trial materials without copies to the court or opposing counsel and has provided no good cause for her actions or inactions.

The court entered an order on Saleh's objection to relocation, an order of child support, and a protection order. Wright did not file a motion to reconsider or appeal the court orders.

Nearly a year later, Wright filed a motion under CR 60(b)(1) and (11) to vacate

[1] Before trial, Wright filed the unsworn declarations of Jones and Calhoun-Wright and documents showing that she was living and working in Seattle. Because Wright did not serve Saleh or the trial court with these pleadings, the court did not consider the declaration or documents at trial.

the parenting plan, the child support order, and the protection order. For the first time, Wright claimed that the court did not have the authority to enter the orders because the judge that entered the original parenting plan in 2001 retained jurisdiction. Wright also claimed that she did not receive notice of the case scheduling order or the protection order. In addition, Wright argued that the court did not have sufficient financial information to enter the child support order and erred in entering the protection order. Wright also argued that the court erred in entering the parenting plan because she disavowed any intention to relocate. In support of her motion to vacate Wright submitted a number of declarations stating that Wright did not plan to permanently relocate to India.

The court denied Wright's motion to vacate the orders under CR 60(b)(1) and (11). Wright appeals.[2]

ANALYSIS

Wright contends the trial court erred in denying her motion under CR 60(b)(1) and (11) to vacate the parenting plan, order of child support, and the protection order.[3]

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[2] We grant Saleh's motion to strike Wright's reply brief because it does not comply with the requirements of RAP 9.1, RAP 9.11 and RAP 10.3(c). See also, Dep't of Labor and Industries v. Brugh, 135 Wn. App. 808, 822, 147 P.3d 588 (2006).

[3] Wright's reliance on CR 55, is misplaced. Wright appeared at trial. RCW 26.09.181(d) allows the court to adopt a proposed parenting plan by default when the other party fails to file a proposed parenting plan. RCW 26.09.181(d) provides:

> (d) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default adopting that party's parenting plan if the other party has failed to file a proposed parenting plan as required in this section

CR 60(b)(1) and (11) provide in pertinent part:

> (b) **Mistakes: Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc**. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
> ...
> (11) Any other reason justifying relief from the operation of the judgment.
>
> The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken.

This court reviews a trial court's decision whether to vacate an order under CR 60(b) for abuse of discretion. In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P.2d 118 (1990). We will not overturn the decision unless the trial court exercised its discretion on untenable grounds or for untenable reasons. Tang, 57 Wn. App. at 653.

CR 60(b) is not a substitute for an appeal. Bjurstrom v. Campbell, 27 Wn. App. 449, 450-451, 618 P.2d 533 (1980) (citation omitted). A CR 60(b) motion is confined to matters extraneous to the final order or judgment and is limited to the propriety of the denial, not the impropriety of the underlying orders. Bjurstrom, 27 Wn. App. at 450-451.

> 'The power to vacate judgments, on motion, is confined to cases in which the ground alleged is something extraneous to the action of the court or goes only to the question of the regularity of its proceedings. It is not intended to be used as a means for the court to review or revise its own final judgments, or to correct any errors of law into which it may have fallen.'

Bjurstrom, 27 Wn. App. at 451 (quoting 1 Henry Campbell Black, A Treatise on the Law of Judgments § 329, at 506 (2d ed.)). The "exclusive procedure to attack an allegedly defective judgment is by appeal from the judgment, not by appeal from a denial of a CR 60(b) motion." Bjurstrom, 27 Wn. App. at 451. "Said another way, an unappealed final judgment cannot be restored to an appellate track by means of moving to vacate and appealing the denial of the motion." State v. Gaut, 111 Wn. App. 875, 881, 46 P.3d 832 (2002). A party "waives any argument" rejected in a ruling by failing to appeal it. Stevens v. City of Centralia, 86 Wn. App. 145, 155, 936 P.2d 1141 (1997).

Wright contends the court abused its discretion in denying her motion to vacate under CR 60(b)(1) and (11) because the judge that entered the parenting plan in 2001 retained jurisdiction. The court's additional findings entered in 2001 state that the "court will retain continuing jurisdiction of this and the linked cases. . . ." In denying the motion to vacate on this ground, the court found that "while a pre-trial order of 10/23/2000 consolidated several cases and assigned jurisdiction" to one judge, the final parenting plan entered in October 2001 does not refer to retaining jurisdiction, and also does not mean that the previous judge "would retain jurisdiction for subsequent new actions such as a relocation/objection action." The court's determination that the finding of the court in 2001 did not apply to a relocation proceeding filed several years later is not an abuse of discretion.

Wright also argues the court did not have jurisdiction to enter the parenting

plan, child support order, and protection order because she did not receive notice of the case scheduling order or the protection order. While Wright listed a post office box for service of pleadings, throughout the proceedings Wright acknowledged that her address in Seattle was "8848 Stone Avenue N #502 Seattle," and that she received copies of the pleadings at the Stone Avenue address. At the show cause hearing on September 12, Wright unequivocally states that she lived at 8848 Stone Avenue North. And when Wright appeared for trial on January 2, 2008, she again acknowledged receiving notice of the trial and other pleadings at the address, "that was in the record ... 8848 Stone Avenue North." The court did not abuse its discretion in rejecting Wright's argument that she did not receive notice of the case scheduling order and the protection order.

Next, Wright contends that under In re Marriage of Grigsby, 112 Wn. App. 1, 57 P.3d 1166 (2002), the court did not have the authority to modify the parenting plan because she disavowed her intent to relocate.

In Grigsby, after the trial court found that the mother's proposed relocation with the children was not in the children's best interests, the mother withdrew her petition to relocate. Grigsby, 112 Wn. App. at 6. Nonetheless, the court modified the parenting plan and designated the father as the primary residential parent. Grigsby, 112 Wn. App. at 6. We reversed and held that RCW 26.09.260(6) allows modification of a parenting plan based on proposed relocation only "'so long as the relocation is being pursued.'" Grigsby, 112 Wn. App. at 16.[4] Because the mother was no longer

pursuing relocation, modification of the parenting plan required showing a substantial change of circumstances under RCW 26.09.260(2). Grigsby, 112 Wn. App. at 16. But we expressly noted that the holding in Grigsby does not apply "when the withdrawal of the request to relocate is disingenuous or made in bad faith. . . ." Grigsby, 112 Wn. App. at 17.

Here, unlike in Grigsby, where "nothing in the record suggests that the trial court did not believe" the mother, the record is clear that the court did not find Wright credible. Grigsby, 112 Wn. App. at 17. The court found the pediatrician records and the testimony of Woodruff credible and did not believe Wright's claim that she did not intend to relocate with I.S. to India, "[m]other was clearly taking child to India." The trial court did not err in denying Wright's motion to vacate on the grounds that Grigsby prevented the court from modifying the parenting plan.[5]

Wright also cannot show that her motion to vacate should have been granted under CR 60(b)(11). CR 60(b)(11) is confined to extraordinary circumstances when

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[4]RCW 26.09.260(6) provides in pertinent part:

> The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued.

[5] Wright also argues that the trial court erred in denying her motion to vacate on the grounds that insufficient evidence supports the child support order and the protection order. Wright waived this argument by not appealing the orders. Bjurstrom, 27 Wn. App. at 450-451. Nonetheless, sufficient evidence in the record supports the orders. Both parents submitted financial information that supports the child support order. Wright's attempt to leave the country with I.S., her failure to comply with the court order to turn over I.S.'s passport and contacting I.S. at her school, support the protection order.

no other section of the rule applies. In re Marraige of Furrow, 115 Wn. App. 661, 674, 63 P.3d 821 (2003). The circumstances must relate to irregularities that are "extraneous to the action of the court. . . ." In re Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985). Irregularities that are extraneous to the court's action or involve substantial deviations from a prescribed rule or means of proceeding justify vacating an order under CR 60(b)(11); errors of law do not. Furrow, 115 Wn. App. at 674. Here, Wright did not meet her burden of showing grounds for relief under CR 60(b)(11).

We affirm the trial court's denial of Wright's motion to vacate.

WE CONCUR: